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No. 89-1086

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

SARAH KLUMPNER, a minor, by RICHARD KAHN, her Guardian ad Litem,

Petitioner,

v.

GEORGE H. KLUMPNER,

Respondent.

BRIEF OF RESPONDENT GEORGE H. KLUMPNER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Illinois Court's determination that a purported Minnesota money judgment was void and not enforceable is a decision which ought to be reviewed by this Court upon a writ of certiorari.

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TABLE OF AUTHORITIES

Supreme Court Rule 17.1 (in pertinent part)

> A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor.

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STATEMENT OF THE CASE

To date the issues underlying this matter have commanded the attention of at least the following tribunals: (1) the Circuit Court of Lake County, Illinois; (2) the Second District Appellate Court of Illinois; (3) the Supreme Court of Illinois (twice); (4) the Hennepin County, Minnesota, Family Court, Juvenile Court and District Court; (5) the Circuit Court of Cook County, Illinois; (6) the First District Appellate Court of Illinois; and (7) this Court.

This litigation began in August, 1980, when Judith Klumpner ("Judith"), the mother of this minor petitioner, filed a divorce petition in Illinois. After filing the petition, Judith left Illinois with the

couple's infant daughter, Sarah, and denied respondent George Klumpner ("respondent") visitation with his daughter. Judith was later held in contempt for this refusal. (Appendix to Pet., p. 74).

Petitioner's conclusory allegations of impropriety regarding Judge Witt (Pet., p. 18) ought to be disregarded. There was no finding of impropriety nor does the record reveal that the case was transferred from Judge Witt because of impropriety.

Petitioner incorrectly summarizes the order entered by Judge Santi on February 23, 1983, by claiming that it stayed all Illinois proceedings "in favor of the Minnesota Juvenile Court proceedings." In fact, the order continued pending matters generally "until further notice." (Pet., p. 18).

Finally, petitioner (Pet., p. 34) surprisingly asserts that the Illinois Appellate Court was "apparently under the impression" that petitioner was attempting to register a child custody judgment in Illinois, rather than a money judgment. It is clear that the Illinois Appellate Court knew petitioner was attempting to enforce in Illinois a purported tort judgment entered in Minnesota. Petitioner cites the Appellate Court's opinion out of context.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari to the Supreme Court of Illinois should be denied because the petition does not set out any special and important reasons that merit this Court's review. In addition, the Illinois decision was correct.

ARGUMENT

I.

PETITIONER HAS NOT SHOWN SUFFICIENT REASON WHY THIS COURT SHOULD GRANT REVIEW ON WRIT OF CERTIORARI.

This litigation began in 1980, as a divorce action brought in Lake County, Illinois. Allegations of child abuse were made by Judith against respondent then in an attempt to obtain the court's approval of her denial of respondent's rights to see and visit with his infant child, then 21 months of age. The child abuse charges were eventually tried and the Illinois trial court ruled against Judith in respondent's favor. The Illinois Appellate Court affirmed. The Illinois Supreme Court denied Judith's petition for leave to appeal. But she kept the litigation pot boiling incessantly, both in Minnesota, where she

had taken the child, and in Illinois. She eventually sought to convince the Illinois courts to enforce a purported judgment she was finally able to obtain in Minnesota against respondent. Her attempt to register the judgment was successful in Illinois at the trial level. But the Illinois Appellate Court reversed and the Illinois Supreme Court denied a petiton for leave to appeal.

Petitioner has not set forth any "special and important" reason, as required by this Court's Rule 17.1, why the Court ought to grant this petition. While of import to respondent and to petitioner, or at least her mother, the moving force behind this litigation, there is no question raised here of sufficient importance to warrant review.

II.

THE ILLINOIS DECISION WAS CORRECT.

The Illinois Appellate Court was correct in holding that the Minnesota Juvenile Court had lacked jurisdiction because the purported exercise of its jurisdiction was in direct contravention of the very purpose for which the Uniform Child Custody Jurisdiction Act ("UCCJA") was enacted. Both Illinois and Minnesota have adopted the UCCJA. In fact, the first attempt by Judith to get a Minnesota court to rule on her charges was turned back precisely because the Minnesota Family Court declined to exercise jurisdiction, citing the UCCJA. Because the Minnesota Juvenile Court lacked jurisdiction, its judgment was void, and in turn the Minnesota judgment rendered in the tort action, which was based on the juvenile court's finding, was also void.

CONCLUSION

For the reasons stated herein, respondent, George H. Klumpner, requests that this Court deny the petition for Writ of Certiorari of Sarah Klumpner, a minor, by Richard Kahn, her Guardian ad Litem.

Respectfully submitted,

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